HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 69 OF 2005.

WITH

CRIMINAL APPLICATION NO.1637 OF 2005

Mr. Yatindra Ramshukla. ...Petitioner

V/s.

The State of Maharashtra. ...Respondent

Shri P.M.Chakhorkar, with Shri Manoj Kumar Upadhyay, advocate for petitioner

Shri K.V.Saste, APP for respondent-State.

CORAM: A.M.KHANWILKAR,J
DATE : APRIL 7, 2005

P.C. :-

1. Heard the counsel for the parties.

2. I see no reason to depart from the concurrent view taken by the two courts below. The counsel for the petitioner however, contends that the recovery of vehicle is not supported by any panchanama reduced into writing by the investigating agency. He further submits that the person from whom vehicle was recovered Shri Pawar, has admitted that he did not possess any document to indicate ownership of the vehicle. It is then contended that the panchas have not been examined

by the prosecution. For all these reasons, the concurrent views taken by the courts below cannot be sustained. These submissions according to the petitioner, have been overlooked by the courts below.

3. After going through the Judgments, it is seen that these aspects were carefully considered by the two courts below. The appellate court has considered the aspect of non-examination of panchas by the prosecution in paragraph-10 of the Judgment. In so far as the evidence of prosecution witness Rohidas Pawar, that has been analysed by the courts below. The appellate court has considered in that respect in paragraph Nos. 11 and 12. The version given by this witness has found favour with the courts below. Even the question regarding, no recovery panchanama is drawn, is considered by the courts below. In other words, the applicant is inviting this court to reappreciate the evidence on record, so as to take a different view of the matter, than the one taken by the courts below. However, that is not the scope of revisional jurisdiction.

4. It is lastly argued that the applicant was juvenile at the relevant time, as he was born on 2nd October, 1981, which fact was established by School

Leaving Certificate at Exh.A to this petition. According to the applicant, the trial has vitiated because the matter ought to have proceeded before the officer under the Special enactment as the applicant was juvenile at the relevant time.

5. This argument is being raised for the first time before this court. No such argument was canvassed either before the trial court or before the appellate court. Indeed, in the memo of the appeal, this ground has been taken. However, there is nothing in the Judgment of the appellate court to even remotely suggest that this argument was seriously canvassed before the appellate court. Besides, the learned counsel fairly accepts that the birth certificate which is now placed on record at Exh.A, was not produced and proved in evidence. On the other hand, the trial proceeded before the lower court on the assumption that the applicant was 22 years of age. The fact that he was not of 22 years of age was required to be asserted before the trial court. That has not been done.

6. The counsel for the applicant lastly submitted that atleast sentence may be reduced because the applicant has already undergone about 3 months of imprisonment. It is suggested that this court may

increase the amount of fine, which order will meet the ends of justice.

7. However, for the reasons, recorded by the trial court in its Judgment in paragraph-11 and 12 and in paragraph-14 of the Judgment of Appellate court, which, inter alia, indicates that the applicant was involved in another similar offence under section 379 of Indian Penal Code in the year 2000, no fault can be found with the period of sentence awarded by the courts below. Merely because, it is possible for this court to take a lenient view cannot be the basis to exercise revisional jurisdiction on the point of sentence. Especially, having regarding to the fact situation of the present case, that will not be permissible.

8. Hence Revision application is dismissed.

9. In view of the order passed in the Criminal Revision Application, Criminal Bail Application No. 1637 of 2005 is also dismissed.